WECHSLER & COHEN, LLP
Attorneys At Law
17 State Street
7th Floor
New York, New York 10004
Telephone: (212) 847-7900
Telecopier: (212) 847-7955

TODD GUTFLEISCH
Direct Dial: 212-847-7905
E-mail: tgutfleisch@wechco.com

May 5, 2017

By Hand and Email

Honorable United States District Judge Richard J. Sullivan
Southern District of New York
Thurgood Marshall United States Courthouse
Courtroom 2104
40 Foley Square
New York, New York 10007

Re: Tebogo Phiri v. RBC Capital Markets, LLC, No.: 17-cv-01661

Honorable Sir:

This is to correct certain typographical errors in the Plaintiff's April 28, 2017 Reply Memorandum in Further Support of Cross-Motion to Bind Royal Bank (Document No. 60). We enclose a redlined version of pages 2 and 3 of the Reply Memorandum indicating the corrections to exhibit references. We apologize for any inconvenience caused to the Court.

Respectfully submitted,

Todd Gutfleisch

cc: Patrick W, Shea, Esq. (Via email only)
Victoria A. Cundiff, Esq. (Via email only)
Caitlin Brown, Esq. (Via email only)

for a preliminary injunction in aid of arbitration, proves only that Phiri emphasized that to obtain the benefit of RBC CM's promises and agreement, he needed a swift determination of his claim. The suggestion that counsel "let it slip" is wrong. Instead, notwithstanding a hot bench, Phiri explained that in addition to seeking a preservation order in aid of arbitration, if FINRA declined his request for an expedited injunction hearing, there would be another request in aid of arbitration. The real reason for Royal Bank's mention of this is to prejudice the Court by quoting Justice Friedman's impatience in addressing an issue that Her Honor thought the parties should have resolved. As Justice Friedman stated, after listening to RBC CM's counsel:

> It is incomprehensible to this Court that both sides could not have negotiated a preservation order on consent without prejudice to their claims before FINRA as to the applicability of the aforesaid rule [FINRA Rule 13804].

(Document No. 38-3, p. 18 ll. 2-5)

In a ploy to take the focus away from the RBC CM ownership assertion, Royal Bank attacks Phiri and his counsel, but undercuts its own arguments. According to Royal Bank, the stipulation between RBC CM and Phiri to convert Justice Friedman's TRO into a preliminary injunction *is* just as broad as the TRO because it imported the TRO's language restraining RBC CM, "its agents, and all other acting under or with it." (Document Nos. ~~38-3 at p. 38, ll. 2-5~~38-1, p.4 and 38-2) Left unsaid is Royal Bank's explanation how, with the limited authority Royal Bank asserts RBC CM had, it could bind Royal Bank to the TRO's terms.[2]

RBC took the calculated risk of allowing the FINRA arbitration to proceed to conclusion without RBC CM raising a defense concerning SAIP ownership. According to Royal Bank, it owns

[2] In Phiri's cross-motion to bind Royal Bank to the Arbitration Order, Phiri's counsel reflected Royal Bank's contention that RBC CM could not bind Royal Bank (while Phiri asserts Royal Bank is one "acting...with" RBC CM). In Royal Bank's opposition, however, it denied that the stipulated Preliminary Injunction is any narrower than the Temporary Restraining Order.

both (i) the SAIP and (ii) RBC CM. At all times, Royal Bank had knowledge of the facts that it relied upon to intervene in this action but it decided not to: intervene in the arbitration; attempt to stay it; or make a disclosure inconsistent with RBC CM's affirmative judicial representation. This Court should not accept Royal Bank's shell game defense especially when it controls RBC CM.

FACTS PERTINENT TO ROYAL BANK'S OPPOSITION[3]

Royal Bank does not argue with Phiri's description of its structure or federal banking regulations. Instead, Royal Bank notes the minimum amount that constitutes "control" of a bank under 12 C.F.R. 225.2, but Royal Bank wholly owns RBC CM (employing a holding company intermediary for 99% of RBC CM). Royal Bank's opposition also does not deny that "Royal Bank and its subsidiaries operate under the master brand name of RBC." (Document No. 41-1, p. ~~6~~4) In an offering prospectus, Royal Bank stated that "any offering of securities in which [RBC CM] participates will be conducted in compliance with the applicable requirements of FINRA Rule 5121." (Reply Declaration of Todd A. Gutfleisch, sworn to on April 28, 2017, Ex. P, p. 43.)~~Id. p.4~~) Royal Bank has represented to the United States Securities and Exchange Commission that Royal Bank "will fully restrict and direct employees in the full service brokerage division [including RBC CM] not to solicit orders from customers with respect to [Royal Bank] shares (except where acting as an Asset Manager..." in connection with a proposed acquisition of City National Corporation ("City National"), another bank holding company. (Reply Declaration of Todd A. Gutfleisch, sworn to on April 28, 2017, Ex. Q, p. 11, fn. 5~~4~~.)

At the first arbitration session, the Panel's chair disclosed that her husband's law firm provided services to "City National Bank, which was acquired by the Royal Bank of Canada," as well as performing "regulatory work and intellectual property work for [Royal Bank's] advertising

[3] Document No. 52, Royal Bank's Opposition Memorandum's "Background" section (p.3) is not a Statement of Facts.